

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE TAVERAS, on Behalf of Himself
And All Others Similarly Situated,

Case No:

Plaintiffs,

-vs.-

**COLLECTIVE AND
CLASS ACTION
COMPLAINT
WITH JURY DEMAND**

SPORTIME CLUBS, LLC d/b/a JOHN MCENROE
TENNIS ACADEMY, ANTHONY DECOO
and RYAN SCHNEIDER,

Defendants.

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Plaintiff JOSE TAVERAS (hereinafter “Plaintiff”) on behalf of himself and all others similarly situated (collectively as “FLSA Plaintiffs” and/or “Rule 23 Plaintiffs”), by and through their attorneys, THE LAW OFFICES OF WILLIAM CAFARO, as and for their Complaint against SPORTIME CLUBS, LLC d/b/a JOHN MCENROE TENNIS ACADEMY (the “Tennis Academy”), ANTHONY DECOO (“Decoo”) and RYAN SCHNEIDER (“Schneider”) (together as “Defendants”), alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters as follows;

NATURE OF CASE

1. This is a civil action for damages and equitable relief based upon Defendants’ flagrant and willful violations of Plaintiff’s rights guaranteed to him by: (i) the overtime provisions of the FLSA, 29 U.S.C. § 207(a); (ii) the overtime provisions of NYLL § 160 and the corresponding N.Y. Comp. Codes R. & Regs (“NYCCRR”); (iii) the requirement that employers furnish employees with wage statements on each payday containing specific categories of information under the NYLL § 195(3); (iv) the requirement that employers furnish employees with

a wage notice at the time of hiring containing specific categories of accurate information, NYLL § 195(1); and (v) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants - - sports complex training facility and their owners/managers - - Plaintiff worked for Defendants as a driver for the Defendants from in or about April 14, 2016 until December 26, 2017. Throughout the majority of his employment, Defendants required Plaintiff to work, and Plaintiff did work, more than forty hours. However, Defendants failed to pay Plaintiff at the overtime rate of pay of one and one-half times his regular rate of pay for each hour that Plaintiff worked per week in excess of forty, as the FLSA and the NYLL require. Furthermore, Defendants failed to furnish Plaintiff with accurate and/or complete wage statements on each payday as the NYLL requires or provide Plaintiff with a wage notice containing the criteria enumerated under the NYLL.

3. Defendants paid and treated of all their non-managerial employees who worked for them in the same manner.

4. Plaintiff brings this lawsuit against Defendants pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of Defendants' willful violations of the FLSA.

5. Plaintiff also brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself, individually, and on behalf of all other persons similarly situated during the applicable NYLL limitations period who suffered damages as a result of the Defendants' violations of the NYLL and the supporting New York State Department of Labor regulations.

JURISDICTION AND VENUE

6. Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq.* Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367, which confers supplemental jurisdiction on this Court for claims arising under New York law.

7. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as all actions comprising the claims for relief occurred within this judicial district.

PARTIES

8. At all relevant times, Plaintiff is a resident of the State of New York, resides in Queens County, and was an “employee” entitled to protection as defined by the FLSA, the NYLL, and the NYCCRR.

9. At all relevant times herein, Tennis Academy was and is a domestic Limited Liability Company with its principal place of business located at 1 Randalls Island, New York, NY 10035.

10. At all relevant times herein, Defendant Decoo was the president and/or owner and/or day-to-day overseer of Tennis Academy and Tennis Project.

11. At all relevant times herein, Defendant Decoo was a resident of the State of New York and had an actual place of business located at 1 Randalls Island, New York, NY 10035.

12. At all relevant times herein, Defendant Schneider was the president and/or owner and/or day-to-day overseer of Tennis Academy and Tennis Project

13. At all relevant times herein, Defendant Schneider was a resident of the State of New York and had an actual place of business located at 1 Randalls Island, New York, NY 10035.

14. At all relevant times herein, Defendants were “employers” within the meaning of the FLSA, NYLL, and the NYCCRR. Additionally, Defendants’ qualifying annual business exceeded \$500,000, and Defendants were engaged in interstate commerce within the meaning of the FLSA as they used supplies in the course of business, such as tennis balls, rackets, nets and other sporting goods, much of which originated in states other than New York and the combination of which subjects Defendants to the FLSA’s overtime requirements as an enterprise. Furthermore, all of Defendants’ employees, including Plaintiffs, the FLSA Plaintiffs, and the Rule 23 Plaintiffs, were individually engaged in interstate commerce as they frequently used goods that have been, and continue to be, moved in interstate commerce. This independently subjects Defendants to the overtime wage requirements of the FLSA with respect to Plaintiff and the FLSA Plaintiffs.

COLLECTIVE ACTION ALLEGATIONS

15. Plaintiff seeks to bring this suit to recover from Defendants his full payment of all unpaid overtime compensation and liquidated damages under the applicable provisions of the FLSA, 29 U.S.C. § 216(b), individually, on his own behalf, as well as on behalf of those in the following collective:

Current and former employees of Defendants who, during the applicable FLSA limitations period, performed any work for Defendants as non-managerial employees who give consent to file a claim to recover damages for overtime compensation that is legally due to them for time worked in excess of forty hours per week (“FLSA Plaintiffs”).

16. Defendants treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: (1) performed similar tasks, as described in the “Background Facts” section below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours each workweek; and (5) were not paid

the required rate of one and one-half times their respective regular rates of pay for all hours worked over forty in a workweek.

17. At all relevant times, Defendants were aware of the requirement to pay Plaintiff and all FLSA Plaintiffs at an amount equal to one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet Defendants purposefully chose not to do so. Thus, Plaintiff and all FLSA Plaintiffs are victims of Defendants' pervasive practice of willfully refusing to pay their employees overtime compensation, in violation of the FLSA

RULE 23 CLASS ALLEGATIONS

18. In addition, Plaintiff seeks to maintain this action as a class action pursuant to Federal Rule of Civil Procedure ("FRCP") 23(b)(3), on his own behalf, individually, as well on behalf of those who are similarly-situated who the Defendants subjected to violations of the NYLL and the NYCCRR during the applicable statutory period.

19. Under FRCP 23(b)(3), a plaintiff must plead that:

- a. The class is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class that predominate over any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;
- d. The representative will fairly and adequately protect the class; and,
- e. A class action is superior to other methods of adjudication.

20. The Rule 23 Class that Plaintiff seeks to define includes:

Current and former employees of Defendants who, during the applicable NYLL limitations period, performed any work for Defendants as non-managerial employees who: (1) worked in excess of forty hours per week without receiving overtime compensation and/or (2) were not issued accurate and/or any pay stubs/wage statements on each payday containing the information that N.Y. Lab. Law § 195(3) requires; and/or (3) were not issued wage notices at the time of their

hire, or at any time thereafter as required by N.Y. Lab. Law § 195(1) ("Rule 23 Plaintiffs").

Numerosity

21. During the previous six years, Defendants have employed, in total, at least forty employees that are putative members of this class.

Common Questions of Law and/or Fact

22. There are common questions of law and fact that govern the claims of each and every Rule 23 Plaintiff, including but not limited to the following: the duties that the Defendants required and require each Rule 23 Plaintiff to perform; whether the Defendants required and require each Rule 23 Plaintiff to work in excess of forty hours per week; whether the Defendants compensated and compensate the Rule 23 Plaintiffs at the legally-mandated rate of one and one half times their respective straight-time rates of pay for all hours worked per week over forty; whether the Defendants furnished and furnish the Rule 23 Plaintiffs with accurate wage statements on each payday containing the information required by N.Y. Lab. Law § 195(3); whether the Defendants kept and maintained records with respect to each hour that the Rule 23 Plaintiffs worked; whether the Defendants kept and maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs; whether the Defendants maintain any affirmative defenses with respect to the Rule 23 Plaintiffs' claims; whether the Defendants' actions with respect to the Rule 23 Plaintiffs were in violation of the NYLL and supporting regulations; if so, whether the Defendants' violations were in willful violation of the NYLL and supporting regulations; and if so, what constitutes the proper measure of damages

Typicality of Claims and/or Defenses

23. As described in the background facts section below, Defendants, despite the title that it assigned to Plaintiff, employed Plaintiffs as non-managerial, non-exempt employees.

Plaintiff's claims are typical of the claims of the Rule 23 Plaintiffs whom he seeks to represent, as the Rule 23 Plaintiffs work, and/or have worked for Defendants in excess of forty hours per week, as non-managerial employees, and Defendants failed to pay Plaintiff overtime. Plaintiff and the Rule 23 Plaintiffs enjoy the same statutory rights under the NYLL to be paid at a rate of one and one-half times their straight time rates for all hours worked per week in excess of forty, and spread of hours, and to be furnished with accurate wage statements and wage notices. Plaintiff and the Rule 23 Plaintiffs have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL and supporting regulations. Plaintiff and the Rule 23 Plaintiffs have all suffered injury, including lack of compensation or under-compensation, due to Defendants' common policies, practices, and patterns of conduct. Thus, Plaintiff's claims and/ or the Defendants' defenses to those claims are typical of the Rule 23 Plaintiffs' claims and the Defendants' defenses to those claims.

Adequacy

24. Plaintiff, as described below, worked the same or similar hours as the Rule 23 Plaintiffs throughout their employment with Defendants. The Defendants did not pay Plaintiff overtime pay for his hours worked over forty each week, which is substantially-similar to how the Defendants paid the Rule 23 Plaintiffs. Plaintiff is no longer employed with the Defendant, and thus has no fear of retribution for his testimony. Plaintiff fully anticipates testifying under oath as to all of the matters raised in this Complaint and that will be raised in the Defendants' Answer. Thus, Plaintiff would properly and adequately represent the current and former employees whom the Defendants have subjected to the treatment alleged herein.

Superiority

25. Plaintiff has no, or few, material facts relating to the Rule 23 Plaintiffs' claims that are atypical of those of the putative class. Indeed, at all relevant times herein, Defendants treated Plaintiff identically, or at the very least, substantially similarly, to the Rule 23 Plaintiffs.

26. Any lawsuit brought by an employee of the Defendants for the same violations alleged herein would be identical to a suit brought by any other employee for the same violations. Thus, separate litigation would risk inconsistent results.

27. Accordingly, this means of protecting the Rule 23 Plaintiffs' rights is superior to any other method, and this matter is properly maintainable as a Class Action under FRCP 23(b)(3).

28. Additionally, Plaintiff's counsel has substantial experience in this field of law.

BACKGROUND FACTS

29. Defendants own and operate a sports complex training facility.

30. At all relevant times, Defendants Decoo and Schneider were the owners and day-to-day overseers of Tennis Academy who in their capacity were responsible for hiring and firing employees, determining their rates and methods of pay and the hours that employees were required to work.

31. Upon information and belief, Defendant Decoo hired Plaintiff on or about **April 14, 2016**.

32. From in or about **April 14, 2016 until December 26, 2017**, Plaintiff worked for Defendants as a driver. Throughout his employment, his job consisted of transporting kids from schools to the Tennis Academy and then taking them from the Tennis Academy to their homes.

33. From in or about **May 1, 2016 until on or about January 15, 2017**, Defendants required Plaintiff to work – and he did in fact work - from 2:00 p.m. to 10:00 p.m. Mondays through Sundays, for a total of 56 hours.

34. From in or about **January 16, 2017 until December 26, 2017**, Defendants required Plaintiff to work – and he did in fact work - from 2:00 p.m. to 10:00 p.m. Mondays through Fridays and one weekend day per week (alternating between Saturdays and Sundays) from 2:00 p.m. to 10:00 p.m. as well, for a total of 48 hours per week.

35. From **May 1, 2016 through March 31, 2017**, Defendants paid Plaintiff a \$14.00 per work hour for all hours worked, including those hours he worked over forty per week. From on or about **April 1, 2017 through on or about January 16, 2017**, Defendants continued paying Plaintiff \$14.00 per hour for the first forty hours per week, while paying him \$16.50 for all hours he worked over forty per week.

36. Plaintiff regularly worked more than forty hours workweeks in which Defendants employed him. For example, from August 7, 2016 through August 13, 2016, Plaintiff worked 56 hours and Defendant paid him \$14.00 for all hours worked, including those hours he worked over forty.

37. Throughout his entire employment, Defendants paid Plaintiff on a weekly basis, without providing him with any and/or accurate wage statements that reflected the amount of hours that he actually worked or his regular rate of pay or his overtime rate of pay for each hour he worked in excess of forty hours in a given workweek, and other statutorily required criteria.

38. Defendants intentionally did not provide Plaintiff with a wage notice at the time of his hire, or at any time thereafter, containing any of the following information: his rates of pay and basis thereof; whether Plaintiff was paid by the hour, shift, day, week, salary, piece, commission,

or other; whether any allowances were claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by Defendants; the name and physical addresses of Defendants; any “doing business as” names used by Defendants; and Defendants’ mailing addresses and telephone numbers.

39. Defendants acted in the manner described herein so as to maximize their profits while minimizing their labor costs.

40. Every hour that Plaintiff worked was for Defendants’ benefit.

41. Defendants treated all FLSA Plaintiffs and Rule 23 Plaintiffs in the manner described above.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime under the FLSA

42. Plaintiff and the FLSA Plaintiffs hereby incorporate all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

43. Defendants were required to directly pay the Plaintiff and the FLSA Plaintiffs an overtime premium of one and one-half times their regular rate of pay for all hours worked over forty (40) in a given workweek.

44. As described above, Defendants are employers within the meaning of the FLSA, while Plaintiff and the FLSA Plaintiffs are employees within the meaning of the FLSA.

45. As also described above, Plaintiff and the FLSA Plaintiffs worked in excess of forty (40) hours per week, yet Defendants failed to compensate them in accordance with the FLSA’s overtime provisions.

46. The Defendants willfully violated the FLSA.

47. As such, Plaintiff and the FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty (40) at the rate of one and one-half times their respective standard rate of pay.

48. Plaintiff and the FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for the Defendants' violation of the FLSA's overtime provisions.

49. All of the foregoing constituted willful and repeated violations of the Fair Labor Standards Act, so the applicable statute of limitations is three years pursuant to 29 U.S.C. § 255(a).

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime under the NYLL

50. Plaintiff and Rule 23 Plaintiffs hereby incorporate all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

51. Defendants were required to directly pay the Plaintiff and Rule 23 Plaintiffs an overtime premium of one and one-half times their regular rate of pay for all hours worked over forty (40) in a given workweek.

52. As described above, Defendants are employers within the meaning of the NYLL, while Plaintiff and Rule 23 Plaintiffs are employees within the meaning of the NYLL.

53. As also described above, Plaintiff and Rule 23 Plaintiffs worked in excess of forty (40) hours per week, yet Defendants failed to compensate them in accordance with the NYLL's overtime provisions.

54. Due to Defendants' violations of the New York Labor Law, Plaintiff and Rule 23 Plaintiffs are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS

Failure to Furnish Wage Statements in Violation of the NYLL

55. Plaintiff and Rule 23 Plaintiffs hereby incorporate all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

56. NYLL § 195(3) requires employers to furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to employees.

57. As described above, the Defendants willfully failed to furnish Plaintiff and Rule 23 Plaintiffs with accurate wage statements containing the criteria required under the NYLL.

58. Prior to February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to the Plaintiff and Rule 23 Plaintiffs for each workweek after the violation occurred, up to the statutory cap of \$2,500.

59. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to the Plaintiff and Rule 23 Plaintiffs in the amount of \$250 for each workday after the violation occurred, up to a statutory cap of \$5,000.

FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS

Failure to Furnish Proper Wage Notices in Violation of the NYLL

60. Plaintiff and Rule 23 Plaintiffs hereby incorporate all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

61. The NYLL § 195(1) requires that employers provide employees with a wage notice at the time of hire containing accurate, specifically enumerated criteria.

62. Each Defendant is an employer within the meaning of the NYLL and the NYCCRR, while Plaintiff and Rule 23 Plaintiffs are employees within the meaning of the NYLL and the NYCCRR.

63. Defendants willfully failed to provide Plaintiff and Rule 23 Plaintiffs with a wage notice containing the criteria enumerated under the NYLL.

64. Prior to February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff and Rule 23 Plaintiffs in the amount of \$50 for each workweek after the violations initially occurred, up to a statutory cap of \$2,500.

65. On or after February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff and Rule 23 Plaintiffs in the amount of \$50 for each workday after the violations initially occurred, up to a statutory cap of \$5,000.

DEMAND FOR A JURY TRIAL

66. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand judgment against the Defendants as follows:

a. A judgment declaring that the practices complained of herein are unlawful and in willful violation of the aforementioned United States and New York State laws;

b. Preliminary and permanent injunctions against Defendants and their agents, employees, representatives, and any and all persons acting in concert with him, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

c. An order restraining Defendants from any retaliation against any individual for participating in any form in this lawsuit;

d. Designation of this action as a FLSA collective action on behalf of Plaintiff and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA

Plaintiffs, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

e. Certification of the claims brought in this case under the NYLL as a class action pursuant to FRCP 23;

f. All damages that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs have sustained as a result of the Defendants' conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiff would have received but for the Defendants' unlawful payment practices;

g. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;

h. Awarding Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs their costs and disbursements incurred regarding this action, including reasonable attorneys' fees, expert witness fees, and other costs;

i. Designation of Plaintiff and his counsel as collective/class action representatives under the FLSA and the FRCP;

j. Pre-judgment and post-judgment interest, as provided by law; and

k. Granting Plaintiff other and further relief as this Court finds necessary and proper.

Dated: New York, New York
February 27, 2019

Respectfully submitted,
LAW OFFICES OF WILLIAM CAFARO

A handwritten signature in blue ink, appearing to read "Louis M. Leon", is written over a horizontal line.

Louis M. Leon (LL 2057)
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